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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,781	11/10/2003	Satoshi Mizutani	20050/0200483-US0	4387
7278	7590	12/06/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 12/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

STW

Office Action Summary	Application No. 10/705,781	Applicant(s) MIZUTANI ET AL.	
	Examiner Luan K. Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
 4a) Of the above claim(s) 3,4,7,13 and 15-17 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,5,6,8-12,14 and 18 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The drawings were received on 10/21/2005. These drawings are approved by the Examiner.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 11, 14 and 18 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "said end edge" in claim 5 and "the bottom" and "the main body" in claim 18 lack proper antecedent basis. In claim 11, the phrase "said individual wrapping container is the individual wrapping container" is confusion and indefinite because it is the same individual wrapping container and claim 11 was cancelled previously but Applicant indicates that claim 11 (previously presented). The phrase "a cut off portion" in claim 14 lacks proper antecedent basis because the specification fails to provide such phrase. In claim 18, the phrase "a side extending parallel ... an acute angle" is inaccurate and indefinite because there is no support for the side extending parallel to the direction of unwrapping the cover in the elected embodiment.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 6, 8-11 and 14 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Berg, Jr. et al. (5,484,636; hereinafter Berg'636). Berg'636 discloses an individual wrapping container (34) comprising a main body (51, 52a) containing an interlabial pad (20) and a cover (52b) that covers a part of the main body. The cover forming an unwrapping portion at an end edge portion (32, Figure 4) to be unwrapped to open the wrapping container and the cover is shaped to have a cut portion (curve along 32) at a place where the individual wrapping container is held when the individual wrapping container is opened. An area where the individual wrapping container is held considered equivalent to a predetermined region where a finger of a wearer is applied. Berg'636 further discloses the end edge of the cover is curved to a bottom of the individual wrapping container. As to claim 6, see Figures 3-4. As to claims 8 and 9, Berg'636 discloses a resealable sealing means (55, column 10, lines 20-25) on a portion where the cover and the main body are brought into contact and the sealing means (55) has a dry edge (Figure 4A). As to claim 14, Berg'636 discloses the cover and the main body are lightly bonded each other (54, Figure 3) at both end portions in a perpendicular direction to an unwrapping direction of the individual wrapping container.

6. Claims 1, 6, 8, 10 and 11 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Allison (4,857,066). Allison discloses an individual wrapping container (22) comprising a

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main body (24, 26) containing an interlabial pad (12) and a cover (28) that covers a part of the main body. The cover forming an unwrapping portion at an end edge portion (Figures 3 and 7) to be unwrapped to open the wrapping container and the cover is shaped to have a cut portion (curve portion, Figure 7) at a place where the individual wrapping container is held when the individual wrapping container is opened. An area where the individual wrapping container is held considered equivalent to a predetermined region where a finger of a wearer is applied. Allison further discloses the end edge of the cover is curved to a bottom of the individual wrapping container. As to claim 6, see Figure 7. As to claim 8, Allison discloses a resealable sealing means (30, 32) on a portion where the cover and the main body are brought into contact (Figure 7).

7. Claims 1, 6, 8, 10, 11 and 14 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Kim et al. (6,502,695; hereinafter Kim'695). Kim'695 discloses an individual wrapping container (17) comprising a main body (two sections between fold line G-G) containing an interlabial pad (10) and a cover that covers a part of the main body. The cover forming an unwrapping portion at an end edge portion (Figures 8-9) to be unwrapped to open the wrapping container and the cover is shaped to have a cut portion (Figure 8) at a place where the individual wrapping container is held when the individual wrapping container is opened. An area where the individual wrapping container is held considered equivalent to a predetermined region where a finger of a wearer is applied. Kim'695 further discloses the end edge of the cover is curved to a bottom of the individual wrapping container. As to claim 6, see Figures 8-9. As to claim 8, Kim'695 discloses a resealable sealing means (20) on a portion where the cover and the

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main body are brought into contact. As to claim 14, Berg'636 discloses the cover and the main body are lightly bonded each other at both end portions (22) in a perpendicular direction to an unwrapping direction of the individual wrapping container.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the published Japanese Patent Application No. 2000-051265 to Kao Corp (hereinafter Kao Corp) in view of Berg, Jr. et al. (5,484,636; hereinafter Berg'636) or Kim et al. (6,502,695; hereinafter Kim'695). Kao Corp discloses an individual wrapping container (1, 3) comprising a main body containing a interlabial pad (2) and a cover that covers a part of the main body (Figure 4). The cover forming an unwrapping portion at an end edge portion to be unwrapped to open the wrapping. Kao Corp further discloses an internal surface (6) of the main body comprises a fine projection (page 5, paragraph 0011). Kao Corp fails to show the end edge of the cover being curved to a bottom of the individual wrapping container. Berg'636 or Kim'695 shows the end edge of the cover is curved to a bottom of the individual wrapping container as above. It would have been obvious to one having ordinary skill in the art in view of Berg'636 or Kim'695 to modify the cover of Kao Corp so the end edge of the cover is curved to a bottom of the

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individual wrapping container to reduce the material during manufacture and also to allow more space for the user to place a finger during unwrapping the container.

10. Claim 12 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Allison (4,857,066). Allison discloses the individual wrapping container (22) as above having all the limitation of the claim. Allison appears to disclose a dimension in the longitudinal direction of the individual wrapping container is in a range of 105-130% of a dimension in the longitudinal direction of the interlabial pad (Figure 7). To the extent that Allison fails to disclose the range as claimed, it would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Allison to modify the size of the container so the container is in a ranged of 105-130% of a dimension in the longitudinal direction of the interlabial pad to reduce the material and reduce the cost of manufacture.

11. Claim 18 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Berg, Jr. et al. (5,484,636; hereinafter Berg'636) or Kim et al. (6,502,695; hereinafter Kim'695) in view of Castaneda (3,970,087). To the extent that the Examiner can determine the scope of the claim, Berg'636 or Kim'695 discloses the individual wrapping container as above having all the limitations of the claim except for the angle between the end edge of the cover and the side being an acute angle. Castaneda shows an individual wrapping container (10) comprising a cover (22) having an end edge and a side (next to edges 30-36) extending parallel to the direction of the unwrapping the cover formed an angle and the angle is formed on a place other than the cover is an acute angle (Figures 1-2). It would have been obvious to one having ordinary skill in the art

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in view of Castaneda to modify the container of Berg'636 or Kim'695 so the end edge and the side extending parallel to the direction of the unwrapping the cover formed an angle and the angle is formed on a place other than the cover is an acute angle to facilitate unwrapping the container.

Double Patenting

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1, 5, 6, 8-12, 14 and 18 are finally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent Application No. 10/705,669. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed and claimed by the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments with respect to 10/21/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370. **Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
December 4, 2005



Luan K. Bui
Primary Examiner



Application of Satoshi Mizutani
Docket No.: 20050/0200483-US0
Serial No. 10/705,781
Title: INTERLABIAL PAD INDIVIDUAL
PACKAGING VESSEL AND INDIVIDUAL
PACKAGING BODY
REPLACEMENT DRAWINGS

1/14

FIG. 1

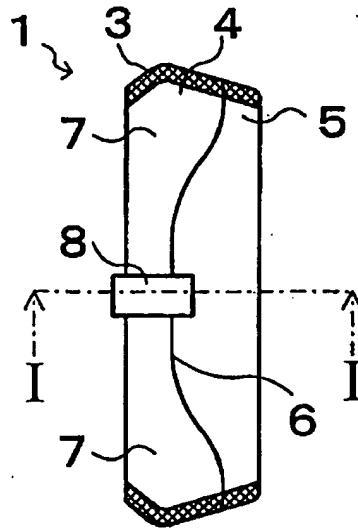
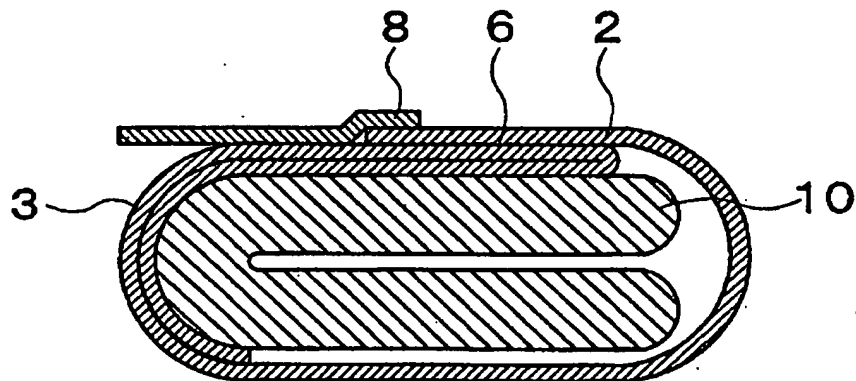


FIG. 2



APPROVED FOR ENTRY. EX. LKB
12/4/05